DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS: 02-0365
Individual Income Tax
For the Tax Year 1998

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ISSUE

I. Constitutionality of the Federal Income Tax.

Authority: U.S. Const. amend. XVI; I.R.C. § 61; IC 6-3-1-9; IC 6-3-1-12; IC 6-3-1-15; Cheek v. United States, 498 U.S. 192 (1991); Stanton v. Baltic Mining Co., 240 U.S. 103 (1916); Brushaber v. Union Pacific R.R. Co., 240 U.S. 1 (1916); Pollock v. Farmers' Loan & Trust Co., 158 U.S. 601 (1895); Springer v. United States, 102 U.S. 586 (1880); Hylton v. United States, 3 U.S. 171 (1796); United States v. Connor, 898 F2d 942 (3rd Cir. 1990); Wilcox v. Commissioner of Internal Revenue, 848 F2d 1007 (9th Cir. 1988); Coleman v. Commissioner of Internal Revenue, 791 F2d 68 (7th Cir. 1986); United States v. Koliboski, 732 F2d 1328 (7th Cir. 1984); United States v. Romero, 640 F2d 1014 (9th Cir. 1981); Snyder v. Indiana Dept. of State Revenue, 723 N.E.2d 487 (Ind. Tax Ct. 2000); Thomas v. Indiana Dept. of State Revenue, 675 N.E.2d 362 (Ind. Tax. Ct. 1997); Cooper Industries, Inc. v. Indiana Dept. of State Revenue, 673 N.E.2d 1209 (Ind. Tax Ct. 1996); Richey v. Indiana Dept. of State Revenue, 634 N.E.2d 1375 (Ind. Tax Ct. 1994).

Taxpayer argues that the federal income tax system – and by derivation, Indiana's individual income tax – is unconstitutional and that application of the income tax system to ordinary citizens is the result of a vast, decades-long, conspiracy to obfuscate the original intent and extent of the Sixteenth Amendment and the Internal Revenue Code.

STATEMENT OF FACTS

The Department of Revenue (Department) sent the taxpayer a "Demand Notice for Payment" on June 19, 2002. The notice indicated that taxpayer owed unpaid "Individual Income" taxes for the year ending December 31, 1998.

On July 25, 2002, taxpayer submitted a protest to the Department. The protest contained a heading indicating that the protest was an "Administrative Notice of Debt Not Owed and Violation of Agent's Authority and Denial of Administrative Due Process." The taxpayer's protest outlined a series of complaints: taxpayer complained that the Department's "Demand

Notice" was unsigned; the United States Constitution did not authorize imposition of an income tax on individual income; and only corporate income was subject to the state's taxing authority. Contained within the letter was a request that the amount of unpaid income taxes, otherwise ascribed to the taxpayer, be immediately abated. Taxpayer stated that "If [Department representatives] do not rescind threats of a tax warrant and lien on my property, or if your office sends me any more unsigned, threatening letters, [taxpayer] will make a claim for damages against you in your personal capacity . . . ." Taxpayer requested that the taxes be abated or the taxpayer "[would] file a lawsuit for . . . damages in US District Court."

Substantiating the taxpayer's protest, taxpayer attached a copy of her 1998 U.S. Individual Income Tax Return. The return was noticeably absent information concerning the taxpayer's 1998 income because it simply contained eighteen sets of "zeroes."

The Department notified taxpayer by means of a July 29 letter (signed) indicating that her protest would be reviewed and assigned to a hearing officer. The protest was duly assigned, and an initial contact letter (signed) was sent to the taxpayer on July 29 indicating that the taxpayer would be given an opportunity to explain the basis for her protest during an administrative hearing. Taxpayer declined the opportunity to respond. A second letter (signed, certified) was sent to the taxpayer again offering taxpayer the opportunity to explain the basis for her protest. Taxpayer responded on September 14 stating the initial "Demand Notice" was "a complete falsehood" and requesting "an explanation in writing." The Department replied on September 19 by means of a letter (signed) stating that taxpayer's bare "falsehood" explanation was somewhat inadequate and that taxpayer's September 14 letter "did not resolve [the] issue of the protested state taxes." Again, taxpayer was invited to take advantage of the available administrative hearing process and to further explain the basis for her protest. Taxpayer responded on October 6 stating that the reason she did not pay state income taxes was because she "declared my taxable income as -0-." Taxpayer stated that she was enclosing a video tape – "Theft by Deception: Deciphering the Federal Income Tax" – which would explain the basis for taxpayer's claim that she owed no state income tax. Taxpayer requested that the Department view the tape "in its entirety." The Department responded by means of an October 10 letter (signed) stating that the Hearing Office would view the video tape and asking if the taxpayer intended to "take part in an administrative hearing either in person or by phone." Taxpayer responded with October 24 letter stating that she "[did] not want to take part in an administrative hearing."

Based upon the taxpayer's initial protest letter, subsequent correspondence, and the contents of the "Theft by Deception" video tape, the Department has attempted to frame the issues raised by taxpayer, and responds to those issues by means of this Letter of Findings.

DISCUSSION

I. Constitutionality of the Federal Income Tax.

Taxpayer argues that the current federal and state income tax system is unconstitutional and that numerous court decisions support this proposition. According to taxpayer, only "non-resident aliens and foreign corporations" are subject to federal or state income taxes. The current tax

structure is predicated on a "fraud unrivaled in history." Further, by "digging through" the Constitution, the tax statutes, and the tax regulations, an "ordinary citizen" will discover that the "conventional wisdom is incorrect," that the income tax laws do not apply to the "income of average Americans," that ordinary people who lose their "blind faith" and abandon "conventional wisdom" will escape the taxing authorities' conspiratorial efforts subjecting them to the burden of federal and state income taxes.

Taxpayer's first argument is that the income tax is an unapportioned tax, repugnant to the Constitution, and that the U.S. Const. amend. XVI "granted no new taxing authority to the U.S. government." Taxpayer's argues that the individual income tax is a "direct tax" that must be apportioned in accordance with the Constitution. Taxpayer errs. There is nothing in the Constitution which states that wages or income cannot be taxed. From the founding of the republic, it has been the consistent opinion of the Supreme Court, that the phrase "direct tax" refers to a tax on real property. Hylton v. United States, 3 U.S. 171 (1796); Springer v. United States, 102 U.S. 586 (1880); Pollock v. Farmers' Loan & Trust Co., 158 U.S. 601 (1895); Brushaber v. Union Pacific R.R. Co., 240 U.S. 1 (1916).

Taxpayer cites to Brushaber, 240 U.S. 1 (1916) for support of the proposition that the federal income tax is an unapportioned tax and is offensive to the Constitution. The case permits no such conclusion. Rather, the Court rejected an argument to contrary and stated as follows:

> Nothing could serve to make this clearer than to recall than in the Pollock Case, in so far as the law taxed incomes from other classes of property than real estate and invested personal property, that is income from "professions, trades, employments or vocations," its validity was recognized; indeed it was expressly declared that no dispute was made upon that subject, and attention was called to the fact that taxes on such income had been sustained as excise taxes in the past. Id. at 17. (Internal citations omitted).

Taxpayer's reliance on the Brushaber opinion is unwarranted. The Court clearly stated that, "[T]he command of the Amendment [is] that all income taxes shall not be subject to apportionment by a consideration of the sources from the taxed income may be derived . . ." Brushaber, 240 U.S. at 18.

Taxpayer may be legitimately entitled to argue that the tax statutes and accompanying regulations are overly complicated. However, the language and effect of the enabling constitutional amendment is plain. "The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration." U.S. Const. amend. XVI.

Taxpayer cites to Stanton v. Baltic Mining Co., 240 U.S. 103 (1916) for support of the proposition that the federal income tax is unconstitutional as an encroachment of the limitations placed upon the federal government. Specifically, taxpayer cites to the text in the case which states that "as the Sixteenth Amendment authorizes only an exceptional direct income tax without apportionment, to which the tax in question does not conform, it is therefore not within the authority of that Amendment." Id. at 112 Taxpayer takes the quotation entirely out of context. The cited above statement is not a holding of the court; rather it is the petitioner's

argument thereafter directly rejected by the Court. A few lines later the Court states that the cited proposition "is plainly in conflict with the meaning of the Sixteenth Amendment as interpreted in the Brushaber Case, it may also be put out of view." Id.

Taxpayer relies on the videotape presentation purporting to establish that she was not subject to federal and state individual income tax. The premise of the videotape is that only non-resident aliens and foreign corporations are subject to income tax. By means of the videotape presentation, taxpayer asserts that the income tax system, as originally established, is constitutionally limited to non-resident aliens and foreign corporations. Taxpayer argues that the current "conventional wisdom" to the contrary is incorrect and that a vast "cover-up" has been implemented over the years by attorneys, tax experts, government officials, and others of that ilk in order perpetuate a "premeditated fraud' on the unsuspecting citizenry. According to taxpayer's presentation, if the ordinary person would only research the statutes and regulations, that person would discover that the income tax "does not include the income of average Americans."

Taxpayer contends that – given the constitutional limitations on federal and state taxing authority – the income tax was originally imposed only on non-resident aliens and foreign corporation, and that through the conspiratorial machinations of tax professionals, the tax was gradually extended to average citizens. Taxpayer's contention is totally without merit, and the Department will not expend its resources in addressing each and every detail of this unfounded, convoluted, and illogical proposition.

Taxpayer's argument does not comport with the law or with ordinary common sense. There is not a single state or federal court decision which remotely supports taxpayer's argument. To the contrary, federal and state courts have consistently, repeatedly, and without exception determined that the average citizen's wages – no matter in what form the taxpayers have attempted to characterize, define, or label those wages – are income subject to taxation. United States v. Connor, 898 F2d 942. 943 (3rd Cir. 1990) ("Every court which has ever considered the issue has unequivocally rejected the argument that wages are not income"); Wilcox v. Commissioner of Internal Revenue, 848 F2d 1007, 1008 (9th Cir. 1988) ("First, wages are income."); Coleman v. Commissioner of Internal Revenue, 791 F2d 68, 70 (7th Cir. 1986) ("Wages are income, and the tax on wages is constitutional."); United States v. Koliboski, 732 F2d 1328, 1329 n. 1 (7th Cir. 1984) ("Let us now put [the question] to rest: WAGES ARE INCOME. Any reading of tax cases by would-be tax protesters now should preclude a claim of good-faith belief that wages – or salaries – are not taxable.") (Emphasis in original); United States v. Romero, 640 F2d 1014, 1016 (9th Cir. 1981) ("Compensation for labor or services, paid in the form of wages or salary, has been universally held by the courts of this republic to be income, subject to the income tax laws currently applicable. . . . [Taxpayers] seems to have been inspired by various tax protesting groups across the land who postulate weird and illogical theories of tax avoidance all to the detriment of the common weal [sic] and of themselves."). As recently as 1991, the Supreme Court characterized as "frivolous" the notion that "the income tax law is unconstitutional." Cheek v. United States, 498 U.S. 192, 205 (1991).

In addressing taxpayer's argument, the Indiana Tax Court has held that, "Common definition, an overwhelming body of case law by the United Sates Supreme Court and federal circuit courts, and this Court's opinion . . . all support the conclusion that wages are income for purposes of

Indiana's adjusted gross income tax." Snyder v. Indiana Dept. of State Revenue, 723 N.E.2d 487, 491 (Ind. Tax Ct. 2000). *See also* Thomas v. Indiana Dept. of State Revenue, 675 N.E.2d 362 (Ind. Tax Ct. 1997); Richey v. Indiana Dept. of State Revenue, 634 N.E.2d 1375 (Ind. Tax Ct. 1994).

Taxpayer's contention, that she was entitled to declare "0" as Indiana adjusted gross income because she filled the corresponding federal return with a string of zeroes, is meritless. The statute is unambiguous. Indiana adjusted gross income begins with federal taxable income as defined by I.R.C. § 62 not simply as whimsically reported by the taxpayer. *See* Cooper Industries, Inc. v. Indiana Dept. of State Revenue, 673 N.E.2d 1209, 1213 (Ind. Tax Ct. 1996). Notwithstanding the brief instructions contained on the Indiana tax return, taxpayer is required to actually perform the calculations necessary to determine taxpayer's liability for Indiana adjusted gross income tax. Given that taxpayer received gross income (I.R.C. § 61) in 1998, is an "individual" under IC 6-3-1-9, was a resident of Indiana for during that year (IC 6-3-1-12), and is a "taxpayer" as defined within (IC 6-3-1-15), the statutes imposing the Indiana individual income tax apply with full force to taxpayer's 1998 income.

FINDING

Taxpayer's protest is denied.

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